IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 9719 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

M B PARIKH FINSTOCK LTD. THRO'MANAGING DIRECTOR

Versus

SHRADHDHA INVESTMENT THRO' ITSPROP.MADHUBEN DOLATSINH PARMAR

Appearance:

MR AJ YAGNIK for Petitioners No. 1-5

NOTICE SERVED BY DS for Respondents No. 1

MR VM PANCHOLI, ADDL. PUBLIC PROSECUTOR for Respondents No. 2 and 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 13/03/2002

ORAL JUDGEMENT

1. This is a petition filed by the petitioners under Section 482 of the Code of Criminal Procedure, 1973 for quashing and setting aside Criminal Complaint No.

0/166/2001 filed by the first opponent before the Chief Judicial Magistrate, Vadodara.

2. It seems that in the said complaint the learned Chief Judicial Magistrate, Vadodara recorded the verification of the original complainant on oath and thereafter he was pleased to issue process for the offences punishable u/s 420 and other offences under the I.P. Code.

3. It seems that the original complainant had filed Cri. Case No. 4736/2000 and thereafter the very complainant filed second complaint being Criminal Case No. 0/166/2001 before the said Court on 15-10-2001 which was referred to by the said Court for investigation to the concerned police station u/s 156 (3) of the said Code. The petitioners have challenged the first complaint being Criminal Complaint No. 4736/2000 filed before the said Court by filing Criminal Application No. 342/2001. It is contended that the said application has been admitted and interim stay has been granted for further prosecution of the said matter.

4. Despite the said fact, according to the case of the petitioners, the aforesaid second complaint has been filed by the same original complainant contending the same set of facts. The complainant is same and the accused persons are the same and the facts stated in both the complainants are also the same. It is, therefore, the contention of the learned counsel for the petitioners that the original complainant could not have filed the second complaint having same facts and when the first complaint was filed before the Chief Judicial Magistrate and it was pending before the said Court. It is also contended that it is more so when the present petitioners have filed the aforesaid Misc. Cri. Application stating that the first complaint has been filed by the original complaint. Therefore, it has been contended that second complaint filed by the original complainant be quashed and set aside.

5. It appears from the record that Rule was issued and Mr. V.M. Pancholi, learned Addl. Public Prosecutor appears on behalf of the State of Gujarat in response to the service of Rule. Despite service of process, the original complainant has not found it proper to appear before this Court.

6. I have heard the learned advocate for the applicant and learned Addl. Public Prosecutor who appears for respondents no. 2 and 3 and perused the

papers. It is very clear that on going through the first complaint being Criminal Complaint No. 4736/2000 placed at pages No. 59 to 65 of the file of this case and the contentions of the second complaint being Criminal Case No. 0/166/2001 placed at page No. 27 to 35 of the file of this case, the contents of both complaints are similar. The facts are same and it may be stated that the facts stated in the first complaint are also repeated in the second complaint. Therefore, this is second attempt made by the very complainant. The first complaint has already been filed on the facts on which second complaint has been filed. It is more so when the present petitioners have filed Cri. Misc. Application No. 342/2000 and obtained interim stay against the further prosecution of the said matter.

7. When the first complaint was filed and when it was pending before the Court, it was not open to the original complainant to file second complaint having the same set of facts. In that view of the matter, it is very clear that the second complaint would not be maintainable in the eye of law. Mr. Pancholi, learned Addl. Public Prosecutor also supports the aforesaid arguments advanced on behalf of the petitioners.

8. In that view of the matter, when the first complaint is pending and despite the said fact, when the second complaint has been filed and when the facts are similar and identical, this is a good ground for quashing the second complaint.

9. For the forgoing reasons, the present application is allowed. Second Criminal Complaint No. 0/166/2001 pending on the file of the learned Chief Judicial Magistrate, Vadodara is ordered to be quashed and set aside. Rule is made absolute. D.S. is permitted.

-0-0-0-0-0-

/JVSatwara/